

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 34 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

2 to 5: No

MANOHARSINHJI P JADEJA

Versus

COMMISSIONER OF WEALTH TAX

Appearance:

MR DA MEHTA for MR RK PATEL for Petitioner
MR BB NAIK for MR RP BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 29/04/99

ORAL JUDGEMENT (per R. Balia, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'B', at the instance of the applicant-assessee, has referred the following two questions of law said to be arising out of its order made in W.T.A. No. 210/Ahd/80

relating to Assessment Year 1974-75 passed on 30th August 1982.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the claim of reduction in the valuation of estate was not included in the claim of exemption from tax, and whether the Tribunal was further justified in declining to entertain both the grounds, namely, ground No. 2 and the additional ground sought to be raised by the assessee to the effect that the estimated fair market value of property in question was excessive and/or that the authorities below ought to have considered and be directed to consider valuation of the said property under Rule 1BB of the W.T. Rules, 1979?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not permitting applicability of Rule 1BB of the said rules on the ground that the said aspect was not raised before the lower authorities and whether the Tribunal was further justified in applying the ratio of the decision of the Gujarat High Court reported at 74 ITR 254?"

2. The two questions essentially centre around the same issue and as will be appearing from the facts, the frame of question does not properly bring out the real controversy and it needs to be reframed. Before doing that, we shall notice the facts.

3. The assessee in his return of wealth has claimed the property known as 'Ranjit Vilas Palace' exempt u/s 5(1)(iii) of the Wealth-tax Act. While claiming it to be exempt, its valuation has been stated at Rs. 79,86,000 as on the valuation date 31.3.1974. The claim of the assessee to exemption was disallowed by the Wealth-tax Officer and the valuation disclosed by the assessee was accepted. The assessee appealed against the order of Assessing Officer before the Commissioner of Wealth-tax (Appeals) who agreed with the W.T.O. and rejected the claim of the assessee to exemption. No dispute as to valuation was raised at that stage. On further appeal before the Tribunal, the assessee raised additional

ground as under:

"without prejudice to ground No. 1 Wealth-tax

Officer was not justified in estimating the fair market value of Ranjit Vilas Palace and the land appurtenant to and forming part of the palace at Rs. 79,86,000 as on 31.3.1974 in view of the facts and circumstances of the case".

The assessee also moved for raising following additional ground by an application dated 31.3.1982 before the Tribunal:

"that the authorities below ought to have considered and be directed now to consider valuation of the property in question under Rule 1BB of the W.T. Rules, 1979 and the property in question be get valued accordingly."

The raising of additional ground was resisted by the Department. It was urged before the tribunal by departmental representative that the question of valuation having not been raised before the C.I.T. (Appeals) and not decided by him cannot be said to arise from the appellate order of the C.I.T. (Appeals) and cannot form the subject matter of any appeal against order of CIT (Appeals) before Tribunal and further that the WTO's finding on valuation had become final even prior to the CIT (Appeals)'s decision. In view of this, it was the contention of the revenue that neither ground No. 2 could be the subject-matter of appeal nor the additional ground could be admitted.

4. The tribunal, following decision of this Court in C.I.T. v. Karamchand Premchand Pvt. Ltd., 74 ITR 254, which laid down that where in an appeal to the A.A.C. by the assessee against the order of assessment, the assessee has not questioned the decision of the officer on a point decided and the A.A.C. has not in his order considered that point, the assessee is not entitled to question the decision of the officer on the point in an appeal to the appellate tribunal against the order of the A.A.C. and the tribunal is not entitled to allow the assessee to agitate the question under the guise of granting leave under rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963, declined to entertain the additional grounds raised by the assessee though it was of the opinion that if the grounds were to be raised it would result in relief to the assessee inasmuch as he would be entitled to get the market value of the property in question assessed as per the method prescribed under

rule 1BB which by then has come into force. Thus, the ground on which assessee's prayer for raising additional grounds was rejected was that the tribunal had no jurisdiction to permit raising of additional grounds in respect of a point which was not raised before the CIT (Appeals). The only question that arise out of the tribunal's order needs to be recast in following terms:

"Whether, on the facts and in the circumstances of the case, the tribunal was justified in not entertaining additional grounds raised by the assessee by holding that the tribunal has no jurisdiction to examine the same which were not raised before and decided by CIT (Appeals) while making order under appeal?"

5. A question arose before the Supreme Court in National Thermal Power Co. Ltd. v. Commissioner of Income-tax, 229 ITR 383, in similar circumstances. The assessee during the Assessment Year 1978-79 had deposited its funds which were not immediately required on short-term deposits with banks. Interest received on such deposits during the previous year relevant to Assessment Year 1978-79 were offered by the assessee for tax assessment and the assessment was completed on that basis. Before the CIT (Appeals), a number of grounds were taken by the assessee challenging the assessment. However, the inclusion of interest on short-term deposits which was offered by the assessee himself was neither challenged by the assessee nor considered by the CIT (Appeals). However, the inclusion of such amount though was not objected to in the first instance in the grounds of appeal raised before the tribunal, by a forwarding letter, the additional grounds were sought to be raised by the assessee challenging the inclusion of amount of interest on short-term deposits in the taxable income of the assessee. The tribunal declined to entertain the additional ground merely on the ground that it does not have jurisdiction to examine the same inasmuch as those questions were not subject-matter of appeal before the lower authority. The following question was posed by the Supreme Court for its consideration,

"Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same?"

The Court disapproved the decision of this Court in Karamchand Premchand (supra) by holding the view to be

too narrow a view of the powers of the appellate tribunal. The Court, referring to its earlier decision in Jute Corporation of India Ltd. v. CIT, 187 ITR 688, held,

"Under sec. 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under sec. 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."

The Court further said,

"The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal."

6. We therefore answer the question as reframed by us in the negative, that is to say, in favour of the assessee and against the revenue by holding that the tribunal was not justified in refusing to entertain additional grounds raised by the assessee merely on the ground that the same were not raised or subject-matter of appeal before the CIT (Appeals) and therefore it has no power to entertain those grounds.

7. It may be clarified that we may not be understood

to say that the tribunal in all circumstances is bound to allow new grounds when raised. Undoubtedly, the tribunal will have discretion to allow or not to allow the grounds when raised. But that is on the merit of assessee's claim to raise new grounds but not on the premise that the tribunal has no jurisdiction to entertain such grounds. Accordingly, the question of law as recast by us is answered in favour of the assessee and against the revenue.

There shall be no order as to costs.

(hn)